

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

**BENJAMIN MOSTAED, on behalf of
himself and all others similarly
situated**

Plaintiff,

v.

**JAMES B. CRAWFORD,
ROBERT H. FOGLESONG,
RICHARD M. GABRYS,
ROBERT B. HOLLAND,
BOBBY R. INMAN,
DAN R. MOORE,
BAXTER F. PHILLIPS, JR.,
STANLEY C. SUBOLESKI,
LINDA J. WELTY, MASSEY ENERGY
COMPANY, and ALPHA NATURAL
RESOURCES, INC.,**

Defendants.

Case. No. 3:11-CV-079-REP

**DEFENDANTS' STATEMENT OF POSITION WITH RESPECT TO PLAINTIFF
MOSTAED'S MOTION FOR APPOINTMENT AS LEAD PLAINTIFF AND
APPROVAL OF HIS SELECTION OF LEAD AND LIAISON COUNSEL**

Defendants respectfully submit this Statement of Position with respect to Plaintiff Mostaed's Motion for Appointment as Lead Plaintiff and Approval of His Selection of Lead and Liaison Counsel (the "Appointment Motion").

On June 23, 2011, Plaintiff Benjamin Mostaed ("Mostaed") advised the Court of his decision to dismiss this case and to pursue it further solely to seek an award of attorneys' fees on the basis of results he claimed already to have achieved.¹ On July 13, 2011, Mostaed filed his

¹ Declaration of Frank J. Johnson in Supp. of Pl. Mot. for an Award of Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards ¶ 48, ECF No. 60-3.

application for attorneys' fees.² Then, on July 22, 2011, Mostaed moved to be appointed "lead plaintiff" and for his lawyers to be appointed "lead counsel" pursuant to the Private Securities Litigation Reform Act ("PSLRA").³

In light of the foregoing, and to the extent the Court feels it necessary to address Mostaed's Appointment Motion, Defendants take no position on whether Mostaed should be appointed lead plaintiff or his counsel lead counsel under the PSLRA. Defendants note, however, that a determination of who serves as lead plaintiff or lead counsel has no bearing on whether the lead plaintiff would be an adequate class representative under Fed. R. Civ. P. 23(a) or whether a class is appropriately certified under Rule 23(b), which are issues not raised by the Appointment Motion.

DATED: August 5, 2011

Respectfully submitted,

/s/ Timothy J. St. George

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² Pl. Mot. for an Award of Attorneys' Fees, Reimbursement of Expenses, and Incentive Awards, ECF No. 60.

³ 15 U.S.C. §§ 78u-4(a)(3)(A) and (B); §78u-4(a)(3)(B)(v); Pl. Benjamin Mostaed's Mot. for Appointment as Lead Pl. and Approval of His Selection of Lead and Liaison Counsel ("Appointment Motion"), ECF No. 62.

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CERTIFICATE OF SERVICE

I certify on this 5th day of August, 2011, I will file a copy of the Statement of Position with respect to Plaintiff Mostaed's Motion for Appointment as Lead Plaintiff and Approval of His Selection of Lead and Liaison Counsel with the Court's ECF filing system, which will send a copy of this instrument to the following attorney(s):

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